

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**





UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

77-1022

UNITED STATES OF AMERICA  
Plaintiff-Appellee

VS.

BERNARD WOODMANSEE, SR., JACKY E.  
DUBRAY and ROY M. HAMLIN  
Defendants-Appellants

Docket No. 77-1022  
77-1023  
77-1024

B

APPEAL FROM THE UNITED STATES  
DISTRICT COURT FROM THE DISTRICT  
OF VERMONT

APPELLANT WOODMANSEE'S BRIEF

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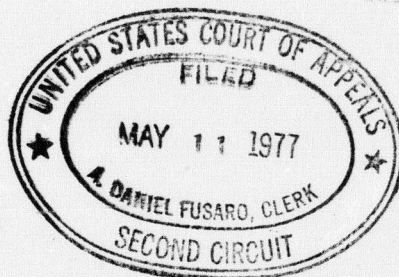


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CASES i,ii	
Statement of Issues Presented for Review	1
Statement of the Case	2
Statement of Facts	3
Detailed Statement of Facts	5
First Hearing and Survey	5
<u>Free Press</u> Articles	8
Hearing on Woodmansee Motion for Transfer	9
Court's Order of October 20	10
Survey and Hearing on Motion for Change of Venue	11
Certain Voire Dire Questions	14
Argument I.	18
Subargument as to Survey Results	22
Conclusion to Argument	34
Argument II. , Conduct of Voire Dire and Abuse of Discretion	36
Subargument II., Trial Judge's Failure to Ask Certain Questions Requested	37
Subargument II., Court Fails to Pose Frankovic Questions	45
Subargument II., Judge Coffrin Fails to Search for Disqualifying States of Mind	47
Subargument II., Failure to Challenge for Cause -- Unfair on Preemptory Challenges	54
Conclusion	55
Specific Relief Sought	56



FEDERAL RULES OF EVIDENCE

Aldridge vs. United States, 283 US 308, 75 L Ed 1054 (1931)  
p. 18, 36, 37, 47

Bailey vs. United States 53 F 2d 982  
p. 42, 47

Bloomfield vs. United States CA 8th, 1960 28 F 2d 46  
p. 19

Brown vs. United States (DC APP 1964) 338 F 2d 543  
p. 37, 42

Chavez vs. United States (10th Cir. 1958) 258 F 2d 816  
p. 37, 42

Cook vs. United States (1967) 375 F 2d 966  
p. 37

Dennis vs. United States, 339 US 162, 94 L Ed 734  
p. 26

Estes vs. Texas 381 US 532, 14 L Ed 2d 543, 85 S Ct 1628 (1965)  
p. 19, 33

Fed. Rules of Criminal Procedure 21 and 24

Ham vs. South Carolina, 409 US 524, 35 L Ed 2d 46, 93 S Ct 848  
p. 18

Irwin vs. Dowd, 366 US 717, 6 L Ed 2 751, 81 S Ct, 1639 at L Ed 755  
p. 18, 19, 24, 27, 33

Lurding vs. United States (6th Cir. 1959), 179 F 2d 419  
p. 43, 44

Marshall vs. United States, 360 US 310, 3 L Ed 2d 1250, 79 S Ct 171 (1959)  
p. 30, 54

Michaelson vs. United States, 335 US 469, 93 L Ed 168 (1948)  
p. 31

Murphy vs. Florida 421 US 794, 44 L Ed 2d 589, 95 S Ct 2031  
p. 18, 27, 29, 30, 34, 46, 47, 54

Rideau vs. Louisiana, 363 US 723, 10 L Ed 2d 663, 83 S Ct 1417 (1963)  
p. 19, 33

Sellers vs. United States, 106 US APP DC 209, 271 F 2d 475 (1959)  
p. 36, 37, 42, 47

Shepard vs. Maxwell, 384 US 333, 16 L Ed 2d 600, 86 S Ct 1507 (1966)  
p. 18, 33

Swain vs. Alabama 380 US 202, 13 L Ed 2d 759, 85 S Ct 824  
p. 46, 55

Taylor vs. United States, 336 F Supp 132 (EDPA) 1974  
p. 25, 26

United States vs. Blount, (6th Cir. 1973) 479 F 2d 650  
p. 35, 38, 42, 44, 46

United States vs. Booker, (7th Cir. 1973) 480 F 2d 1310  
p. 36

United States vs. Carper DC 1953, 13 FRD 483, 487  
p. 19

United States vs. Chiarizio, (2nd Cir. 1975) 525 F 2d 289  
p. 46

United States vs. Colabella, 448 F 2d 1299 (1971)  
p. 20

United States vs. Haynes, 398 F 2d 980 (2nd Cir. 1968)  
p. 20, 25, 26, 27, 45, 46

United States vs. Lewin (7th Cir. 1972) 467 F 2d 1132  
p. 36, 44

United States vs. Marcello, DC La 1968, 280 F Supp 510, 513-514  
p. 19

United States vs. Napoleone (3rd Cir. 1965) 349 F 2d 350  
p. 36, 44

Zippo Manufacturing Co. vs. Ragers Imports, Inc. (DC SDNY 1963)  
p. 22



STATEMENT OF THE ISSUES PRESENTED FOR  
REVIEW BY DEFENDANT BERNARD WOODMANSEE, SR.

1

SHOULD THE TRIAL OF BERNARD WOODMANSEE, SR. HAVE BEEN TRANSFERRED FROM BURLINGTON, VERMONT TO ANOTHER DISTRICT OR ANOTHER PLACE IN THE DISTRICT OF VERMONT BECAUSE THERE EXISTED IN THE AREA AROUND BURLINGTON FROM WHICH THE VENIREMEN WOULD BE DRAWN A PREJUDICE SO GREAT THAT BERNARD WOODMANSEE COULD NOT OBTAIN A FAIR AND IMPARTIAL TRIAL AT THE FEDERAL COURTHOUSE IN BURLINGTON, VERMONT?

2

DID JUDGE ALBERT COFFRIN ABUSE HIS DISCRETION IN CONDUCTING THE EXAMINATION OF PROSPECTIVE JURORS AND VIOLATE THE ESSENTIAL DEMANDS OF FAIRNESS IMPOSED UPON HIM IN THE EXERCISE OF HIS DISCRETION?

STATEMENT OF THE CASE

On June 1, 1976 Bernard J. Woodmansee, Sr. was arraigned before the Honorable Albert Coffrin in the United States District Court for the District of Vermont at Burlington, Vermont on a three count Indictment. Count I charged Woodmansee, Sr., together with Dubray, Hamlin and Reynolds, co-defendants, with transporting in interstate commerce stolen securities or aiding and abetting in the transportation in interstate commerce of stolen securities; Count II charged Woodmansee, Sr. and his co-defendants with concealing, storing, bartering and disposing of the same securities which were allegedly a part of and constituted interstate commerce and which were allegedly stolen, converted and taken by fraud; Count III charged a conspiracy to commit the offenses charged in Count I and Count II.

All the Defendants filed various motions including the following: Motion to Transfer case to another Federal District Court; Motion to Sequester the jury at the time of trial; Motion to Conduct Voir Dire in a certain way and to pose certain voir dire questions of prospective jurors. The Defendant Woodmansee was originally represented by Attorney Saul Agel but on July 14, 1976 Attorney Duncan Frey Kilmartin was substituted for Attorney Agel due to Attorney Agel's conflict in representing Virginia Reynolds, co-defendant. On October 27, 1976 a jury was impanelled. On October 28, 1976



the taking of evidence commenced and on Sunday, November 7, 1976 at 10:40 A.M. the jury returned a verdict against Bernard Woodmansee, Sr. finding him guilty as to all three counts. Woodmansee was sentenced on December 6, 1976. This is an appeal from the conviction of Bernard Woodmansee, Sr.

#### STATEMENT OF FACTS

On July 12, 1976 Attorney Saul Agel presented to the Court the result of a telephone survey involving the identification of Bernard Woodmansee, Sr. (APP. 36 -47U) On July 23, 1976 Bernard Woodmansee, through his attorney Duncan Kilmartin, filed a Motion to Transfer his case to another Federal District Court.

On August 10, 1976, Woodmansee filed a Memo of Law on changing the trial location and attached copies of all Burlington Free Press articles referring to Woodmansee and which could be found. (See Record for copies which were too voluminous to reproduce and summary of Articles, attached to this Brief. Reproduction of articles was difficult because they were available only on microfilm)

On August 16, 1976 a hearing was held on Woodmansee's Motion for Transfer to another District. (APP. 48-57) On October 20, 1976 Judge Coffrin made a "trial order" requiring all questions which counsel wished to be asked of prospective jurors by the Court to be submitted no later than noon Monday, October 25, 1976. (APP. 10 and 58-59). On October 25, 1976



Defendant Woodmansee filed with the Court the following:  
a request for changes in the voir dire procedures; a series  
of specific questions to be posed to prospective jurors by  
the Court together with specific questions to be asked in  
response to specific answers; a memo of law in support of  
a change of venue, changes in voir dire procedures and  
specific voir dire questions; a new survey in connection  
with Woodmansee's Motion to Transfer. (APP. 10, 60-102)  
On October 26, 1976 a hearing was held before Judge Coffrin  
requesting transfer of Woodmansee's case to another District,  
changes in voir dire (APP. 67-77). A jury drawing was held  
on Wednesday, October 27, 1976 commencing at 9:50 A.M. and  
concluding at 6:32 P.M. (Transcript "Jury Drawing")

A jury was impanelled at 6:32 P.M.

## DETAILED STATEMENT OF FACTS

### FIRST SURVEY AND HEARING

It was the contention of Bernard Woodmansee both through Saul Agel, his first attorney, and Duncan Kilmartin, his second attorney, that Woodmansee could not obtain a fair and impartial trial at any place in the United States District of Vermont but especially at the Federal Courthouse in Burlington, Vermont. The surveys presented to Judge Coffrin in support of this contention was conducted by Dr. Kathleen Frankovic. Miss Frankovic was an Assistant Professor of Political Science at the University of Vermont with a PhD in Political Science from Rutgers University and had special training in secondary statistical analysis of sample surveys (APP 37-38). The first survey was conducted between July 6 and 9, 1976 for the purpose of determining the ability of registered voters, who appeared in the Burlington area and St. Albans area telephone directories, to correctly identify Bernard Woodmansee as a criminal in comparison with correctly identifying other well known persons. These two telephone directories, when taken in combination, cover the same approximate geographic base as does the area from which veniremen are drawn for jury service in the Federal Court in Burlington. The only individuals to whom the survey questions were posed and whose responses were recorded were those who claimed to be registered voters (APP 41). Apparently this was done in order to approximate the universe of prospective



veniremen for Federal Court inasmuch as the jury selection plan for Vermont uses voter checklists as its population base.

A high percentage (31%) correctly identified Bernard Woodmansee as a criminal (APP 34 & 42). Those who correctly identified Bernard Woodmansee were uniformly negative, as opposed to neutral or positive, in their feelings about Woodmansee. As a social scientist, Dr. Frankovic did not expect any recognition of Bernard Woodmansee to speak of and expressed surprise at the results of her survey (APP 46).

During Miss Frankovic's testimony on July 12, 1976, Judge Coffrin took judicial notice to a limited extent "that Mr. Woodmansee has achieved some level of notoriety in this vicinity". (APP 47)

Miss Frankovic made the observation that the individuals contained in the sampling process had probably been around the Burlington area for a minimum of some months in order to have a phone number appear in the directory. (APP47A).

Of the 41 respondents correctly identifying Woodmansee as a criminal, only 10 were neutral in their feelings (or indifferent) and 30 scored him below 50. Of that 30, 26 gave him a negative score of zero (APP35) or extreme hostility toward him.

Attorney Saul Agel pointed out to the Court during the July 12, 1976 hearing that Bernard Woodmansee had an extensive criminal record and that he had received extensive media coverage. Agel called the Court's attention to the

fact that the Judge himself knew of the coverage afforded to Bernard Woodmansee's activities (APP47K). The Court queried Mr. Agel, without denying the truth of his allegations, why a fair and impartial trial could not be handled at the time of jury selection through the customary voir dire (APP 47K). Woodmansee requests the Court of Appeals at this juncture to take judicial notice of the fact that customary voir dire in the District of Vermont consists of the lawyers themselves handling the bulk of voir dire and that Judge Coffrin's later handling of the voir dire was not the "customary" practice of either the State or Federal trial courts in Vermont.

At the same hearing it was brought to the Court's attention that Michael Churchill was to be the Government's chief witness and that Michael Churchill was not only a "government informant" but also had a criminal record. (APP47M)

After the issue of Churchill was mentioned, the attorneys for Mr. Hamlin and Mr. Dubray both requested severance on the grounds of prejudicial joinder with the notorious Woodmansee (APP 470). Notwithstanding the level of notoriety which the Fronkovic survey had just shown, the Court suggested that lawyers and others associated with law enforcement work attached more notoriety to their clients than the general public did. (APP47P)

During the hearing the government conceded that "Mr. Woodmansee is well known in the State of Vermont. There is no disagreement there at all". (APP 47P) The Court,



because it was primarily considering the notorious activities of Woodmansee in a severance context suggested that Woodmansee was going to figure prominently in whatever trial was conducted. His name would be mentioned, his activities would be mentioned and he (the Judge) could not see how anything was solved by severing as far as "the publicity of Woodmansee's reputation was concerned?". (APP 47R Emphasis Mine). Attorney Schuster, then representing Dubray, returned to the Court's attention to changing the venue to another location (APP 47T).

The Court concluded the hearing insofar as it concerned Woodmansee's adverse publicity by suggesting that it could be handled by voir dire with a particular jury at the time the jury was selected (APP 47U). It should be noted that as of this date Mr. Agel had sought relief to withdraw his appearance on behalf of Woodmansee and new counsel had not yet been obtained (APP 7).

#### FREE PRESS ARTICLES

On August 10, 1976, Woodmansee submitted to the Court all copies of BURLINGTON FREE PRESS articles referring to the name Woodmansee which could be found. There were approximately 55 articles submitted to the Court which covered a period from December 10, 1963, to May 26, 1976. Every article, without exception, concerned alleged or proven criminal conduct on the part of Bernard Woodmansee and some 48 of the headlines contained the name "Woodmansee".

(See Record on Appeal for actual articles and Special Appendix A of this Brief for Dates, Headlines and Summary of Articles). "Woodmansee" as a name had a logical, necessary and unqualified connection with a reputation as a criminal in the geographic area served by the FREE PRESS.

HEARING ON WOODMANSEE MOTION FOR TRANSFER TO ANOTHER  
FEDERAL DISTRICT COURT - AUGUST 16, 1976

In addition to submitting a memo, Woodmansee's new attorney, Attorney Duncan Frey Kilmartin requested the Court to recognize a media market controlled by two vehicles, the BURLINGTON FREE PRESS and WCAX-TV. (APP 48). He also referred the Court to the compilation of BURLINGTON FREE PRESS articles which he had submitted previously on Woodmansee's behalf. He also pointed out to the Court that he was involved on behalf of his client with conducting a survey of two different population bases both based exactly on the population base used by the Federal Court in Burlington from which its veniremen were selected. The Court claimed no objection to any procedure that Woodmansee's attorney proposed to employ but claimed that the Court thought it (the change of venue issue) can be handled by voir dire (APP50). The Court went on to make its thoughts on surveys very clear by saying "I don't care how large or how many surveys you have or what you use for your base or what individuals you have. . . why do you think voir dire cannot accomplish its mission in this regard". Kilmartin claimed in summary that prejudice was not an objective matter and not something subject to factual



accuracy. (APP 50-51) Kilmartin also claimed that it was not a matter of whether its prospective veniremen remembered Woodmansee in detail but what their general instincts would be. (APP 52) Kilmartin also claimed that he expected the new survey to show a higher than 31 % recognition factor because he expects persons on the voter checklists to represent a different population pool which paid more attention to what they read than the population group used in the first Frankovic survey (APP 54-55).

The Court continued to claim it could handle the issue of fair and impartial trial in voir dire and that while Woodmansee was free to conduct further surveys it would not be inclined to change its ruling. (APP 55-56)

COURT'S ORDER OF OCTOBER 20, 1976

The Court stated that it would conduct voir dire of the prospective jurors to the exclusion of individual counsel. It further ordered that specific questions which counsel desired to be asked would be considered only if filed in writing by Noon, October 25, 1976. The Order was not issued until October 20, 1976, and copies were mailed to the attorneys on that date. (APP10) Woodmansee's attorney and his office were located in Newport, Vermont. Any additional questions which were to be asked on voir dire with respect to specific answers to particular questions by prospective jurors were also required to be submitted in writing on



October 25, 1976, for the Court's consideration. (APP 58)

SURVEY AND HEARING ON MOTION FOR  
CHANGE OF VENUE - OCTOBER 26, 1976

On October 25, 1976, the second survey conducted by Dr. Frankovic was filed with the Court in connection with Woodmansee's Motion for Change of Venue. (APP 10) A hearing was held the following day in the Court's chambers at 3:00 P.M.

The survey speaks for itself but it is important to note the following concerning the survey:

1. The population base used was the exact same population base used for the jury selection plan for the Federal Court in Burlington, Vermont. Its samples were drawn in such a way so as to avoid calling and interviewing any person who had in fact been previously called for jury duty or might be called for jury duty in the instant case.

2. The survey was much more "sophisticated" than the original survey and was calculated to determine among prospective or "likely veniremen":

- a. the level of recognition of Bernard Woodmansee;
- b. the level of recognition of Bernard Woodmansee as a criminal;
- c. the sources of knowledge or information about Woodmansee;
- d. their perception of Woodmansee;
- e. their opinion as to whether or not Woodmansee



or some individual with a similar reputation could obtain a fair trial in the exact geographic areas from which veniremen were called for the Federal District Court in Burlington, Vermont (APP 60).

3. Fifty-seven percent (57%) of those responding claimed to recognize the name Bernard Woodmansee and 47% of all those responding correctly associated his name with "criminal activity". It should be noted that the "association question" was not leading but was entirely "neutral". (APP61)

4. The survey showed 88% of the people responding read the FREE PRESS and watched television news shows on television (WCAX-TV) and 90% who recognized the name Woodmansee recalled reading about him in the FREE PRESS or hearing about him on TV or radio.

5. The survey showed that once having identified the name Woodmansee as associated with criminal activity 75% further claimed to have heard his name as a defendant in a criminal case or in connection with criminal activity.

6. Those people who had not heard of Bernard Woodmansee were asked a series of abstract questions similar to those asked of those persons who had heard of Woodmansee and those abstract questions dealt with the issues of ignoring an individual's reputation and judging him fairly and impartially in a criminal trial.



7. The survey showed some very interesting secondary analytic results. They were as follows: persons who might be potential jurors and who correctly associated Woodmansee with crime were more likely to say that they could ignore Woodmansee's reputation and give him a fair trial than those who did not recognize Woodmansee and were asked in the abstracts about disregarding a criminal's reputation. Persons who did not know Woodmansee felt it would be difficult for their peers to be fair as well as for themselves. Persons who recognized Woodmansee felt that both they and their peers would disregard Woodmansee's reputation and give him a fair trial. This survey raises substantial doubt about the honesty of prospective jurors who recognize Woodmansee's name and claim that they can disregard his reputation in rendering their verdict.

8. Dr. Frankovic found that their knowledge of Woodmansee and the negative evaluation of him may very well be a "community norm" among the "likely juror" population (APP 66).

The Court received the survey in evidence and further accepted a recitation of the testimony that Attorney Kilmartin expected to give through Dr. Frankovic during the hearing of October 26, 1976. Apparently Dr. Frankovic would have testified that the survey results were an accurate and true reflection of the thinking (state of mind, substitution mine) of the person being interviewed (APP 72).

During the hearing the Court also accepted an article entitled "Unsolved Murders Haunt Investigators" which appeared in the BURLINGTON FREE PRESS on October 10, 1976, in which was mentioned Bernard Woodmansee as having been found to be an accessory after the fact in the shooting death of one Raymond Lestage (APP73).

CERTAIN VOIR DIRE QUESTIONS REQUESTED BY  
DEFENDANT WOODMANSEE

On October 25, 1976, Woodmansee filed a series of specific questions to be posed to prospective jurors by the Court in response to the Court's Order requiring these questions to be submitted for the Court's consideration. Among the questions requested were the following:

1. Do you read the BURLINGTON FREE PRESS regularly?
2. Do you get the most out of your television news from Channel 3, WCAX-TV out of Burlington?
3. Have you heard anyone talking about this case before today?
4. Have you heard of this case before today?
5. Since you came here for jury duty have you seen or heard anything which has lead you to form some opinion on this case, one way or the other?
6. Have you ever expressed an opinion about this case?
7. Have you formed any opinion from the news media, television and radio, that would be a burden for the Defendant



to overcome?

8. Do you think that there was anything at all in your prior experience as a juror which might affect your present ability to serve as a juror or to make a fair and impartial judgment in this case with regard to Mr. Woodmansee?

9. Do you believe that the FBI is capable of committing illegal activity in order to obtain the conviction of persons they consider to be criminals?

10. Do you believe that the state and local prosecuting agencies are capable of engaging in crimes and illegal activity in order to obtain the conviction of people or a person that they think are criminals?

11. Have you or has any relative or close acquaintance ever been, to your knowledge or information, a paid informant of the FBI, CIA, state prosecutor, or any local law enforcement agencies or other federal enforcement agencies such as the Federal Drug Enforcement Agency? If so, explain in detail your knowledge or information.

12. Have you or has any relative or close acquaintance ever been approached to be a paid informant or manufacturer of crime by a law enforcement agency?

13. Do you believe that a person accused of a crime would more willingly testify against someone the government desires to convict, if the prosecutor or a law enforcement officer offers a very good deal in return for the testimony?

14. Do you think that in such circumstances the person testifying in order to obtain a good deal would shade or distort the truth in order to make sure that he receives his "pay-off" after his testimony?

15. Do you think that giving a person consideration in payment in some form for his testimony is a legitimate technique for the government to use?

16. If such a witness testifies would you consider his credibility in light of the fact that he was being paid for his testimony?

17. Would you tend to believe the testimony of a policeman, because he is a policeman, more than that of another witness?

18. A whole series of questions found on pages 97 and 98 of the Appendix which essentially duplicate the questions posed to persons interviewed in the second survey.

19. Are you aware of and do you truly believe in the principle that a man is presumed innocent until he is proven guilty by the Government beyond a reasonable doubt?

20. Do you realize that you must give the defendant the benefit of this presumption of innocence without any mental reservations whatsoever?

21. And, do you realize that you must consider this presumption of innocence as actual proof of innocence until it is overcome by proof of guilt beyond a reasonable doubt?

22. Can you assure me that you will give the Defendant the full benefit of this presumption of innocence?



23. You understand don't you that it is not the Defendant's duty to prove himself innocent and that it is up to the prosecution to prove that Mr. Woodmansee is guilty of the specific crimes he is charged with beyond any reasonable doubt?

Most of the foregoing questions the Court failed to ask. As to some of the questions the Court asked them in the wrong form and would not rectify the mistake even when in receipt of a specific objection from counsel.

We are certain that the questions requested were asked of individual jurors and a juror gave a response giving rise to a challenge for a cause, the Court failed to excuse the juror for cause and forced the Defendant to rely on their preemptory challenges.

The detailed facts, other than the questions Defendant Woodmansee requested to be asked of each individual juror, which supported Woodmansee's contention that Judge Coffrin abused his discretion in the conduct of voir dire will be set out in the Argument itself. It is our contention that the Court will have to review in detail the entire transcript of jury drawing which numbers 242 pages together with the "Detailed Statement of Facts" and Appendix.

## ARGUMENT

### I

JUDGE COFFRIN SHOULD HAVE HONORED BERNARD WOODMANSEE'S REQUEST FOR A CHANGE OF VENUE BECAUSE BERNARD WOODMANSEE, SR. DEMONSTRATED, PRIOR TO VOIR DIRE, THE EXISTENCE OF PREJUDICIAL PUBLICITY, A COMMUNITY FROM WHICH PROSPECTIVE VENIREMEN WOULD BE DRAWN DEEPLY HOSTILE TO WOODMANSEE AND A COMMUNITY OF PROSPECTIVE VENIREMEN WHO WOULD EITHER ADMIT TO A DISQUALIFYING PREJUDICE OR WHOSE PROTESTATION OF A DISQUALIFYING PREJUDICE WAS TO BE DRAWN IN QUESTION AND DOUBTED AS A MATTER OF LAW.

The United States Constitution guarantees to a criminal respondent in Federal Court the right to a jury trial by a panel of impartial, "indifferent" jurors and a fair trial and a fair tribunal is a basic requirement of due process. Irvin v. Dowd 366 US 717, 6 L Ed 2d 751, 81 S Ct 1639 at L Ed 755.

Federal Appellate Courts, reviewing the actions of the District Court, are apparently not only required to employ constitutional standards of review but also supervisory standards of review. Murphy vs. Florida, 421 US 794, 44 L Ed 2d 589, 95 S Ct 2031 at p. 593 and Chief Justice Burger's dissent at p. 597, Lawyer's Edition; Ham vs. South Carolina, 409 US 524, 35 L Ed 2d 46, 93 S Ct 848 at p. 50, L Ed; Aldridge vs. United States, 283 US 308, 75 L Ed 1054 (1931).



The burden is on the challenger to show a reasonable likelihood of prejudice in the community from which veniremen would be drawn. United States vs. Marcello, DC La 1968, 280 F Supp 510, 513 - 514.

Woodmansee has observed that defendants typically claiming reasons for a change of venue rely upon Irvin vs. Dowd, supra., Rideau vs. Louisiana, 373 US 723, 10 L Ed 2d 663, 83 S Ct 1417 (1963), Estes vs. Texas, 381 US 532, 14 L Ed 2d 543, 85 S Ct 1628 (1965) and Shepard vs. Maxwell, 384 US 333, 16 L Ed 2d 600, 86 S Ct 1507 (1966) but all of these cases involve the defendants rights to a fair trial applied to the states through the due process clause of the Constitution. They are not cases which are factually similar to the nature and extent of publicity which Woodmansee had in the Burlington area nor do they involve pre-trial publicity standards as applied to Federal trial courts.

It has been suggested that a Motion for a Change of Venue under Rule 21 (a) is best determined at voir dire because the Court can better determine at that time whether the Defendant could obtain a fair and impartial trial in the District by obtaining a fair and impartial jury. Bloomfield vs. United States, CA 8th, 1960, 28 F 2d 46; United States vs. Carper, DC DC 1953, 13 FRD 483, 487. However in the instant case the Defendant submits that he reasonably, adequately and persuasively raised his contention



that he probably could not obtain an impartial jury from the realm of speculation to the realm of fact. Although most of the reported cases, including cases from the Second Circuit Court of Appeals, deal with the burdens placed upon a defendant in demonstrating actual and/or implied bias of prospective jurors at the time of voir dire, these burdens, though, in one form or another, are imposed upon the defendant in any attempt on his part to have the location of trial changed because of prejudice at the proposed place of trial. United States vs. Haynes, 398 F 2d 980 (2nd Cir. 1968)

Under the American Bar Association Standards for Criminal Justice relating to "Fair Trial and Free Press", a motion for change of venue which is made prior to the impanelling of the jury, should be disposed of before the impanelling.<sup>1</sup> Standard 3.2 (d). The standard for granting the motion apparently involves proof by qualified public opinion surveys of implied bias, or, if possible, the proof of actual prejudice. The standard is set forth as follows:

A motion for change of venue or continuance shall be granted whenever it is determined that because of the dissemination of potentially prejudicial material, there is a reasonable likelihood that in the absence of such relief, a fair trial cannot be had. This determination may be based on such evidence as qualified public opinion surveys or opinion testimony offered by individuals, or on the court's own evaluation of the nature, frequency and timing of the material involved. A showing of actual prejudice shall not be required.

1. ABA Standard 3 was approved as good practice by the Second Circuit in United States v. Colabella, 448 F 2d 1299 (1971).

It is the position of Woodmansee that he had met his burden of proof and had demonstrated by evidence accepted by Judge Coffrin that there was a reasonable likelihood that a fair trial could not be had at the Federal Courthouse in Burlington, Vermont. By refusing a change of venue Judge Coffrin abused his discretion.

As of the afternoon of October 26, 1976 Judge Coffrin was in possession of more than fifty (50) articles concerning Bernard Woodmansee which had appeared in the BURLINGTON FREE PRESS over a period of fourteen (14) years; two (2) surveys; testimony by Dr. Kathleen Frankovic, PhD, made in connection with the surveys; judicial notice that Bernard Woodmansee had achieved a certain level of notoriety and had a reputation as a criminal in the Burlington area.

Each survey was prepared in accordance with approved surveying standards. See "The Uniqueness of Survey Evidence" by Hans Zeisel, Cornell Law Quarterly, Volume 45, page 322 and discussion therein analyzing the characteristics of surveys which should be acceptable to a court. Each survey directed itself to a universe which was relevant to the issue. The first survey was directed to "registered voters" who were selected at random from two phone directories which served the general area from which veniremen are called to the Federal Court in Burlington, Vermont. The second survey used the exact same universe that the Federal Court in Burlington did in selecting prospective veniremen, to wit, the voter checklist on file in the Clerk's office in



Burlington. The sample in the first survey was generally accurate but the sample in the second survey was very accurate in that it was composed in exactly the same fashion as the "master wheel" which the Clerk of the Federal Court uses. The questions posed in both surveys were non-biased, non-leading and were conducted by persons experienced in surveying. The interviewing situation and the sequence of questions tended to reflect accurately the characteristics at which the survey aimed. Each survey was presented with accompanying expert testimony and further expert testimony was available had the Court desired it.

In summary, both surveys showed not only the state of the mind of the universe from which federal veniremen would be drawn, but the result should be accepted for the truth of the matters stated. See Zeisel, *supra*; Zipco Manufacturing Company vs. Rogers Imports, Inc. ( DC SDNY 1963) 316 F Supp 670.

THE SURVEY RESULTS, WHEN READ TOGETHER WITH THE ARTICLES FURNISHED TO THE COURT FROM THE FREE PRESS, RAISED THE CONTENTIONS OF WOODMANSEE ABOVE THE REALM OF SPECULATION TO THE REALM OF FACT BY DEMONSTRATING THE FOLLOWING:

A. IDENTIFICATION OF WOODMANSEE AS A CRIMINAL BY A MAJORITY OF THE COMMUNITY OF PROSPECTIVE VENIREMEN;

B. ACTUAL BIAS AGAINST WOODMANSEE BY A LARGE SEGMENT OF THE COMMUNITY OF WHICH PROSPECTIVE VENIREMEN WERE MEMBERS;

C. IMPLIED BIAS AGAINST WOODMANSEE BY THE COMMUNITY

OF WHICH PROSPECTIVE VENIREMEN WERE MEMBERS;

D. THAT PROSPECTIVE VENIREMEN HAD LEARNED FROM NEWS SOURCES OF THE DEFENDANT'S CRIMINAL RECORD AND REPUTATION AND CHARACTER AS A CRIMINAL;

E. THERE EXISTED IN THE COMMUNITY FROM WHICH THE VENIREMEN WERE TO BE DRAWN A COMMUNITY NORM OF DEEP HOSTILITY TO WOODMANSEE AND FIXED PERCEPTION THAT WOODMANSEE WAS A CRIMINAL.

The surveys show, especially the first survey, that there was deep hostility in the community to Bernard Woodmansee. The first survey, which had as one of its purposes the determination of "feelings" in the community toward Woodmansee, demonstrated that 75% of the persons interviewed who identified Woodmansee had negative or hostile feelings against him and a total of 63% gave him a score of zero revealing deep resentment and hostility. Only one person felt positively about Woodmansee and the remaining 25% were neutral. (APP35) The first survey shows clearly that the "average man" who knew of Bernard Woodmansee knew of him as a criminal and felt hostile toward him.

The second survey was not calculated to gage the community's "acceptance of" or "hostility toward" Bernard Woodmansee. Rather it was aimed at determining whether Woodmansee could receive a fair trial in the community from which prospective veniremen for Burlington Federal Court were drawn. Of those who identified Woodmansee as a criminal



62% believed that Woodmansee was "widely known in the Burlington area as a criminal". 49% of those who recognized Woodmansee could not assure the interviewer that they could be impartial and disregard Woodmansee's reputation as a criminal if called upon to serve on a jury. Certainly on its face one can draw the inference in the second survey that there existed a widespread feeling in the community of hostility toward Bernard Woodmansee but when read in the light of the first survey there needs to be no inference.

As suggested above, an impartial jury is a jury composed of "indifferent persons". The hostility of the community toward Bernard Woodmansee was not consistent with impartiality. "Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedures not chained to any ancient and artificial formula." Irvin v. Dowd, supra. at p. 757 L Ed. The hostility present in the Woodmansee case is not a hostility related merely to the charges in this case. More importantly it is related to 14 or more years of publicity steadily implanting in the public's mind that the name Woodmansee is synonymous with crime in Vermont.<sup>2</sup>

2. See Assistant U. S. Attorney O'Neill's remarks during bail revocation hearing. T1395 et seq. especially where he claims Bernard Woodmansee is "Vermont's answer to organized crime".



The two surveys show the existence of actual bias among a substantial portion of the community from which prospective veniremen are drawn. The Second Circuit has made a distinction between proof of actual bias and implied bias. Actual bias is based upon expressed proof that a prospective juror's state of mind is prejudicial to a party's interest. United States vs. Haynes, 398 F2d 980 (1968) at 984; Taylor vs. United States, 386 F Supp 132 (EDPA) 1974 at p. 139, 140. While "actual bias" has typically been confined to express proof on voir dire, it can be and was proved before voir dire by the surveys in this case. Actual prejudice is demonstrated when a person claims that they cannot decide the case solely on the evidence in the law given to them but that some other factor (knowledge or information) may or will enter into their judgment. In short, the person claims that they cannot lay aside knowledge, information or previous opinion concerning the case or a defendant.

Forty-nine percent (49%) of the people who correctly identified Bernard Woodmansee in the second survey could not give the assurance that they personally could be fair and impartial in judging Bernard Woodmansee and ignore his past reputation. Fifty-three (53%) or fifty-four percent (54%) of those asked the question in the abstract (could you ignore an individual's reputation and judge him fairly and impartially)



could not assure the interviewer that they could lay aside their opinions concerning reputation and render a fair and impartial verdict. In short, half of the people admitted to actual bias by admitting that they could not lay aside a previous opinion as to reputation and render a verdict based on the evidence presented in court. Woodmansee contends that he demonstrated actual prejudice and raised a presumption of prejudice created by pervasive, intensive and long-term pre-trial publicity before the Court received voir dire responses.

The question of implied bias is a very important question in determining whether Judge Coffrin abused his discretion by not transferring the location of trial prior to voir dire. "Implied bias" is when the law cautiously incapacitates a juror from serving on the jury because it suspects prejudice, because in general persons in a similar situation would feel prejudice. United States vs. Haynes, supra. at p. 984. "Implied bias" recognizes those situations in which the "average man" cannot be expected to be impartial despite his protestations to the contrary. Taylor vs. United States, supra, at p. 141. In order to determine implied bias the Court must make a psychological judgment founded on human experience and not on technical learning. Dennis vs. United States, 339 US 162, 94 L Ed 734, Frankfurter's dissent at p. 747 L Ed.

The confusion over "implied bias" arises apparently because it is a notion which partakes not only of bias



implied by law (as suggested by Senior Judge Waterman in Haynes, supra, at p. 984) but because it is a notion which partakes of a mixed question of law and fact (as suggested in Irvin vs. Dowd, supra at p. 756 L Ed). The law requires the implication of bias to certain pre-announced classes of jurors but it also requires the implication of bias when a juror claims to be able to lay aside a formed opinion and be impartial but, under the proven and demonstrated circumstances, the law believes or suspects he cannot. The law permits a presumption of impartiality when a juror claims he can lay aside his impression or opinion and render a verdict based on the evidence presented in court (See Irvin vs. Dowd, supra, at p. 756 L Ed), but the defendant is given an opportunity to inquire, in a given case, whether the juror can lay aside his opinion, Irvin v. Dowd, supra at p. 756; Murphy vs. Florida, 421 US 794, 44 L Ed 2d 589, 95 S Ct 2031 at P. 595 L Ed. In short, Woodmansee claims that the law gives him the right and opportunity to demonstrate that prospective jurors are likely to be partial, notwithstanding verbal protestations to the contrary.

The second survey clearly demonstrates that prospective jurors who claim to be able to set aside their opinions concerning Woodmansee are to be suspected of prejudice notwithstanding any verbal assurance to the contrary. The most important finding of Dr. Frankovic was that those persons who



correctly identified Bernard Woodmansee and claimed that they could give him a fair trial regardless of his reputation were not completely candid in their views and that there was a substantial likelihood that they continued to be prejudiced against Woodmansee, notwithstanding their claim of impartiality (APP 65 & 69).

The reason for suspecting the claimed impartiality of those persons who had prior knowledge of Woodmansee is based upon the following: more people who recognized Bernard Woodmansee as a criminal claim they could be fair than those who were asked the "individual fairness" question in the abstract; a far greater percentage of persons who did not recognize Woodmansee felt that they could not lay aside their opinion about a notorious individual than those who did recognize Woodmansee as a criminal. (APP 64) One would expect that there would be no significant difference between the responses of those who knew Woodmansee and those who did not know Woodmansee to this question about laying aside one's opinions and giving the Defendant a fair trial. When the differences occur in the response rate it is obvious that the differences are due to a continuing bias among those individuals who have heard of Woodmansee and claim to be able to set aside their opinions and give him a fair trial.

Thus the most important finding of Dr. Frankovic on the issue of implied bias was that they also refer to specific or implied bias on the part of those individuals

who have heard of Bernard Woodmansee and claim to be able to give him a fair trial. Had Judge Coffrin chosen to receive the testimony of Dr. Frankovic on the hearing of October 26, 1976 she would have testified to that effect. (APP64,65,66,69)

Woodmansee does not claim that the surveys show some general situation in which the average man cannot be expected to be impartial despite his protestations to the contrary. Rather he claims the survey shows a precise situation based upon the pre-trial publicity afforded to Bernard Woodmansee over a period of years in a given universe of prospective jurors exposed to that publicity which requires the implication of bias to prospective veniremen taken from the same universe as those in the survey, to wit, the implication of bias to prospective veniremen in this specific case.

It is the position of Woodmansee that he reasonably and according to the best available practice seized the opportunity to demonstrate "the actual existence of such an opinion in the mind of the juror as will raise the presumption of partiality" notwithstanding his protestations to the contrary and that not only did Woodmansee seize the opportunity but demonstrated what was expected of him. Murphy vs. Florida, supra, at p. 595.



The surveys and the newspaper accounts in the FREE PRESS, when read separately or together, demonstrated that news accounts of the Defendant's criminal record, reputation and character had reached a majority of the community from which prospective veniremen were to be drawn and that a majority of the prospective veniremen could be expected to have an out-of-court knowledge about Woodmansee's record, reputation and character. Persons who have learned from news sources of a defendant's prior criminal record are presumed to be prejudiced when called as prospective jurors in the Federal Courts. See Marshall v. United States, 360 US 310, 3 L Ed 2d 1250, 79 S Ct 171 (1959) and Murphy vs. Florida, supra, at p. 593 L Ed.

Apparently the rationale of Marshall, supra, is that when a prospective juror is exposed to information of a character so prejudicial it could not be directly offered as evidence, the prejudice to the defendant is almost certain to be as great (if not greater) when that evidence reaches the jury through news accounts as when it is made a part of the government's evidence. Such information (criminal record, criminal activity, reputation or character) may be of greater prejudice to the defendant when it reaches prospective jurors "out of the trial" because it is not tempered by any protective procedures.

Federal Courts have, almost unanimously, disallowed resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. The law simply closes the whole matter of character, disposition and reputation on the prosecution's case in chief. The prosecution may not show the defendant's prior trouble with the law, specific criminal acts, or ill-name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice. Michaelson vs. United States, 335 US 469, 93 L Ed 168 (1948) at p. 173, 174 L Ed.

The long term and intensive pre-trial publicity concerning Woodmansee, his criminal record, his character and reputation was not only inadmissible as evidence for the prosecution when Michaelson, supra, was decided but continues to be inadmissible under the Federal Rules of Evidence, Rule 404 (a)(b). Generally reputation, character and other criminal wrongs or acts are not admissible and when they are



it is not through an out-of-court knowledge or opinion or understanding of the jurors. In Woodmansee's case such evidence or information concerning character, reputation criminal activity and criminal record should not be permitted to come in in any event and certainly not through a back door.

The surveys demonstrate that 47% of the prospective veniremen associated the name Woodmansee with crime or criminal activity and of that particular group 75% claim to have heard him named as a defendant in a criminal case or in connection with a criminal activity and 62% claimed that they believed Bernard Woodmansee was widely known in the Burlington area as a criminal. Ninety percent (90%) of those identifying Woodmansee recalled reading about him in the FREE PRESS or hearing him mentioned on TV or radio. The articles concerning Woodmansee and the television reports never associated him with anything but a criminal record or a reputation as a criminal. It may be concluded that approximately one-half of the entire community from which prospective veniremen were drawn and therefore one-half of the prospective veniremen would come to court with out-of-court knowledge and information concerning the criminal record, character and/or reputation of Bernard Woodmansee and were therefore presumed to be prejudiced. On this particular factor alone, Woodmansee contends that venue

should have been changed under Federal Supervisory Standards and that Judge Coffrin abused his discretion in not so doing.

The final reason in support of the argument that Woodmansee's trial should have been relocated is that there existed a "community norm" concerning Bernard Woodmansee which, while similar to the sentiments held by the communities in Rideau, Estes, Irvin, Sheppard, supra, had its origin in long-term, detailed and intensive publicity through both the FREE PRESS and WCAX-TV. A community norm is just as prejudicial as the community sentiments in the several cases referred to above, but Woodmansee suggests that the community norm was not something "instantly created which would soon die out" but was created due to fourteen (14) years worth of publicity, in a given geographic area from which federal veniremen were to be drawn, by two journalistic outlets. It can reasonably be suggested that Bernard Woodmansee held a unique status in the community surrounding Burlington. It is difficult for us to draw any parallels with reputed criminals in other communities. Possibly one might liken Bernard Woodmansee's status in Vermont, especially the Burlington area, to former Mayor Richard Daley's status as a politician in Chicago. Most everyone in Chicago recognized the name Richard Daley and associated it with the status of a politician. Most everyone in the Burlington area of Vermont recognizes the name Bernard J. Woodmansee and associates it with the status of being a criminal.



Dr. Frankovic suggests that when 50% or more of a population holds a certain view (to wit, the name Bernard J. Woodmansee is linked with crime) that opinion can be considered a "community norm". "Knowledge of Woodmansee and the consequent negative evaluation of him, may very well be a 'community norm' among the 'likely juror' population." (APP66) The proof of a community norm about an individual's reputation and character and the hostility of the community toward the individual is recognized in Murphy vs. Florida, supra, p. 596 L Ed. It is recognized not only for demonstrating that most veniremen will admit to actual bias but for the purpose of showing that the reliability of the others protestations may be drawn into question for it is then more probable that they are part of a community deeply hostile to the accused and more likely that they may unwittingly have been influenced by it. Woodmansee believes that he has shown that the setting of the trial was inherently prejudicial.

#### CONCLUSION TO ARGUMENT I

Each of the foregoing reasons, taken individually or as a group, demonstrate that Bernard J. Woodmansee should have had the place of his trial relocated prior to commencement of voir dire. His position on this issue will be supported directly and indirectly by his arguments concerning the conduct of voir dire. Woodmansee takes the position, however, that F.R.Cr.P. 21 (a) requires the Court to give serious attention to the Defendant's Motion for a Change of Venue and the proof

which he offers in support of that motion and that the Court, when the Defendant meets his burden under Rule 21, cannot ignore the requirements of Rule 21 and make its decision as to whether a fair trial can be obtained upon the results of voir dire.

It is one thing to have attempted to meet the burdens imposed by Rule 21 and ABA Standard 3.2 (c) and have had your proof insufficient to show reasonable likelihood of prejudice. It is quite another thing to have met not only the burden of going forward but the burden of persuasion and have the Judge suggest that while he accepts all which you have proven, he has high hopes that through the voir dire he can accomplish the picking of a fair and impartial jury to the satisfaction of the Court. (APP 76,77).



## ARGUMENT

### II

THE TRIAL COURT HAS A BROAD DISCRETION AS TO THE MANNER OF CONDUCTING VOIR DIRE AND AS TO THE QUESTIONS TO BE ASKED OF PROSPECTIVE JURORS, BUT THIS DISCRETION IS SUBJECT TO THE ESSENTIAL DEMANDS OF FAIRNESS AND IN THE INSTANT CASE JUDGE COFFRIN ABUSED HIS DISCRETION IN THE CONDUCT OF VOIR DIRE AND THE QUESTIONS PUT TO PROSPECTIVE JURORS ON VOIR DIRE BY FAILING TO ADHERE TO THE ESSENTIAL DEMANDS OF FAIRNESS.

Many reported cases stand for the proposition that Federal Rule of Criminal Procedure 24 invests wide discretion in the trial court in determining the manner of conducting voir dire, the questions to be asked of veniremen, the manner and method for executing challenges for cause and preemptory challenges. Equally clear is that discretion is not without its limits and the limits placed upon the exercise of this discretion is that the exercise is subject to the essential demands of fairness. Aldridge vs. United States, 283 US 308, 75 L Ed 1004 (1931); United States vs. Blount , (6th Cir. 1973) 479 F 2d 650; United States vs. Lewin (7th Cir. 1972) 467 F 2d 1132; United States vs. Booker, ( 7th Cir. 1973) 480 F 2d 1310; Sellers vs. United States, 106 US APP DC 209, 271 F 2d 475 (1959); United States vs. Napoleone, (3rd Cir. 1965) 349 F 2d 350.

It is the contention of Woodmansee that Judge Coffrin committed several errors which constituted an abuse of his discretion and a violation of the essential demands of fairness.

JUDGE COFFRIN DECLINED AND FAILED TO ASK CERTAIN QUESTIONS ON VOIR DIRE WHICH WERE REQUESTED BY COUNSEL FOR THE DEFENDANT

Where the trial judge elects to conduct the entire voir dire himself under the provisions of Rule 24 (a) and requests all questions, both original and follow-up questions, which counsel wished to be submitted to the jury to be given to the Court before commencement of voir dire, the judge has a duty to pose certain of those questions or similar questions covering the subject matter and the failure to do so constitutes an abuse of discretion and a failure to meet the essential demands of fairness. Aldridge, supra, at p. 1056 L Ed; Brown vs. United States (DC APP 1964) 338 F 2d 543; Sellers vs. United States, 271 F 2d 475; Chavez vs. United States, (10th Cir. 1958) 258 F 2d 816; Cook vs. United States (1967) 375 F 2d 966.

Woodmansee made timely requests to the Court and he requested that "each and every question posed in the attached Request for Voir Dire be asked of each potential juror in the presence of the Defendant Woodmansee and his counsel". (APP78) As stated in the "Detailed Statements of Facts" and on APP 99, the Defendant Woodmansee posed a



series of questions relating to the following topics: could an individual juror accept the proposition of law that a defendant is presumed to be innocent, has no burden to establish his innocence, and is clothed throughout the trial with this presumption". A thorough and close review of the Transcript of the Jury Drawing shows that questions covering these topics and the request of Woodmansee were never asked of any juror. On pages 13, 14 and 15 of the Transcript it may be noted that the Court made statements to the prospective jury panel about these topics, but never inquired of the jury concerning them. On pages 57, 58 and 59 of the Transcript of the Jury Drawing, the Court discussed these topics with a juror by the name of Mrs. Ball out of the presence of the rest of the jury, but never asked her questions fairly covering those requested by the Defendant. In any event, Judge Coffrin failed, though requested, to ask these questions which were requested not merely by Woodmansee's attorney but by Hamlin's attorney, Mr. Kupersmith. It is submitted that this was an abuse of discretion under United States vs. Blount, supra, at p. 651.

Woodmansee requested the Court specifically ask each juror "would you tend to believe the testimony of a policeman, just because he is a policeman, more than that of another witness?" (Detailed Statement of Facts and APP 94). The



record shows that Defendant Hamlin made a similar request through his attorney Mr. Kupersmith. A close review of the Transcript shows that the Court covered this topic (Status as policeman giving rise to greater or less credibility) only with those jurors who claim to be policemen or related to policemen. Even when covering the topic with those particular prospective jurors, the Court as frequently as not failed to pose appropriate questions on the topic.

On page 17 and 18 of the Transcript, when interrogating Mrs. Johnson individually because her husband was an Auxiliary State Trooper, the Court posed, in the disjunctive, the following question:

"Would you, for instance, be inclined to give more weight to the testimony of a police officer than any other witness, or could you judge the testimony of the witness on the basis of what they say, and as you see them on the stand without any preconceived notions as to the weight to be given their testimony?"

Answer: I believe I could serve."

In this particular instance not only was the question posed in the disjunctive requiring more than a yes or no answer, it required a more specific answer than "I believe I could serve".

Page 18 and 19 of the Transcript when questioning Mrs. Grady whose husband's cousin was a police captain, the Judge failed to pose the appropriate question to her. In



addition Mrs. Grady, who ultimately sat on the jury, told the Court that there could be other reasons why she could not determine the facts of this matter based on the evidence presented in Court. (See T. 19 of the Transcript of Jury Drawing) The Judge never inquired of her further.

The next juror, Mr. Palmer, indicated he had an uncle who was the chief of police and another uncle who used to be a deputy sheriff. (T. 19) He claimed that his relationship to them might affect his ability to sit on this case because "I might lean slightly towards the judgment for the police". (T. 20) He then indicated, initially, that he "could not put aside any prejudices he might have as far as that (his leaning towards the judgment for the police) was concerned, and he could not fairly and impartially hear the evidence in this case, and solely on the evidence of this case. The Judge "reformed" his answer for him, in the presence of the entire prospective panel, and ended up having Mr. Palmer agree that he "could be fair and impartial". He then went on to ask Mr. Palmer specifically "could you accept the testimony of the witnesses as it is given on the stand, weighing the testimony of the witnesses not be inclined to give law enforcement officers any greater weight than it deserved?" (T.20). Mr. Palmer did not reply and his silence might be construed as "yes". Still this question was posed to Mr. Palmer

individually and was not in an appropriate form. As of this point in time there were nine other jurors in the box who were asked no question covering the topic.

Further inquiry was made of a juror named Mr. Newcity on p. 76 - 78 of the Transcript. Newcity tried to be candid with the Court and tell the Court "I might tend to favor a police officer perhaps, sir". (T. 77) The Court then went on to "shoehorn" Mr. Newcity into the right "shoe". It was only after Woodmansee's Attorney brought to the attention of the Court Woodmansee's prior record in the County in which Newcity was a deputy sheriff himself that the Court inquired of him again and eventually excused him for cause. (T.85,89,90,91 and 92) It is important to note that Woodmansee's Attorney brought the Court's attention specifically to its failure to pose the appropriate questions concerning the topic of police officer credibility. (T. 91, 92)

At T. 116 the Court finally poses the question in one of its proper forms to juror Lawton. It should be noted that this question was asked of Mr. Lawton in the absence of all other prospective jurors and only after it was put to him did the "complete jury" return. (T. 116,117)

Mr. Hammond and Mrs. Sanborn indicated that they were related to police officers but the Judge did not fairly cover the question of the credibility of police officers even with them. (T.128,129) When interrogating Mrs. Sanborn



alone, because she claimed prior knowledge of Woodmansee, Judge Coffrin did ask the question in an appropriate form but it was out of the presence of the rest of the jury.

(T. 143)

Judge Coffrin conceded to certain individual jurors that the testimony of police officers could be expected in this trial and as the Transcript shows the testimony of police officers played a prominent part in the trial. Certain responses to the question requested about police officer credibility would have made the prospective juror challengeable for cause and other responses might have alerted defense counsel to use their preemptory challenges. United States vs. Blount, supra, at 651; Bailey vs. United States, 53 F 2d 982. Under the circumstances present it was an abuse of discretion and a violation of the essential demands of fairness for Judge Coffrin to refuse to ask a question similar to "would you give greater credence to the testimony of a law enforcement officer merely because he is an officer compared to any other witness". Brown vs. United States (DCCA 1964) 338 F 2d 543; Sellers vs. United States (DCCA 1959) 271 F 2d 475; Chavez vs. United States (10th Cir. 1958) 258 F 2d 816.

In the Detailed Statement of Facts voir dire questions number 11,12,13,14,15,and 16 form a natural grouping relating to the status of a paid informer for the government testifying at trial. The Court only posed one question

related to this topic and it went as follows:

"One of the Government's main witnesses in this matter is likely to be an individual who has pending federal criminal charges against him, and has cooperated with the Government following his arrest on those charges. Would any of you tend in any way to disbelieve the testimony of such a person because of these circumstances, or would you at least weigh his credibility just as you would that of any other witness?"

Woodmansee's counsel specifically objected to this question on two grounds: it was posed in the disjunctive and required more than silence or a yes or no answer in order to obtain a response; it was not a fair statement of the law concerning the testimony of an informant. (T.31,32, 33, 106) On T. 131 the Court attempted to correct the problem of asking a question in the disjunctive. However at T. 170 and 171 the Court goes back to the disjunctive.

It is interesting to note that the questions was posed in the disjunctive to one Mr. Pratt (T. 208,209) and he made a specific response as required by the inherent characteristics of the question. He was the only one.

Woodmansee has the following specific objections to the failure of the Judge to ask his questions concerning Government informers, the question which the Judge did pose related to the topic and the inherent characteristics of the question:

1. Woodmansee's questions concerning the topic would have permitted him to probe the "hidden prejudices of the jurors", Lurding vs. United States, (6th Cir.) 179 F 2d



419 and to obtain anticipated responses which would afford the basis for a challenge for cause United States vs. Blount, supra, p. 651; United States v. Napoleone, supra. Judge Coffrin's failure constituted an abuse of discretion.

2. The question was posed in the disjunctive and made it impossible for any defendant to determine the jurors reaction to the question. Even upon specific objection the Court failed to cure that problem, even though it knew in advance that Mr. Churchill, the Government informant, would play the prominent role in the trial.

3. Under the specific circumstances of this case, with Churchill as the Government's "key" witness and his status as a former undercover informant being kept in "protective supervision" by the Government, it was arbitrary and unreasonable to refuse to put questions to prospective jurors which would have indicated their direct or indirect relationship to "such witnesses". United States vs. Lewin, (7th Cir. 1972) 467 F 2d 1132; United States vs. Napoleone, supra at p. 353,354; Lurding vs. United States (6th Cir. 1950) 179 F 2d 419.

4. The question itself is prejudicial because witnesses such as Churchill are to have their testimony evaluated with the greatest caution. The question as posed by the Judge suggested that Churchill should be treated just like any other witness. Woodmansee submits that was an

abuse of discretion.

COURT FAILS TO ASK QUESTIONS POSED IN THE SECOND  
FRANKOVIC SURVEY TO THE JURY

Woodmansee requested that each individual juror have posed to him the same set of questions as were posed to the "prospective veniremen" in the second survey.

(APP 78,97 and 98) There were obviously several purposes in this request, all of which were in strict accord with the principles governing the conduct of voir dire.

The survey questions were calculated to compare juror answers to those questions with the answers given by "prospective veniremen" to the interviewers. In view of the survey results and the quality of the survey, the Court's refusal to ask these questions in the appropriate sequence to jurors who recognized Woodmansee as well as those who didn't constituted an abuse of discretion. Normally if the Judge fairly the covered the topics involved in these particular questions, Woodmansee could probably not complain as long as they fairly and accurately covered the topic. But here the questions were design to elicit actual bias (United States vs. Haynes, supra, at p. 984) and also to probe for hidden and/or implied bias as Woodmansee was both permitted and required to do if he wished to go "beyond speculation



over the thoughts and attitudes not manifest" by the prospective jurors. United States vs. Chiarizio, (2nd Cir. 1975) 525 F 2d 289 at p. 295; United States vs. Haynes, *Supra*, at p. 984; Murphy vs. Florida, *supra* at p. 595 L Ed. Judge Coffrin denied Bernard J. Woodmansee, Sr. the opportunity to demonstrate that the jurors assurances that he is equal to the task of laying aside his impression or opinion in rendering a verdict based on the evidence presented in Court was not dispositive of Woodmansee's right and that there was a strong suspicion or the actual existence of such an opinion in the mind of a prospective juror as would raise the presumption of partiality. The Court demanded that Woodmansee demonstrate to it that the claims of impartiality by prospective jurors should be treated with a high degree of suspicion and at the same time denied him the opportunity to do so.

The series of questions were specifically designed to deal with challenges for cause, Blount, *supra*, at p. 651 and to make meaningful the exercise of preemptory challenges by Woodmansee and his counsel, Swain vs. Alabama, 380 US 202, 13 L Ed 2d 759, 85 S Ct 824 at p. 772, 773 L Ed.

It should be noted at this juncture that Woodmansee's primary complaint as to this series of questions goes primarily to questions 1 through 8, 2A and 3A but the balance of the questions, 9 through 15, were also important, even though not strictly related to the survey.

JUDGE COFFRIN BY HIS ATTITUDE, LEADING QUESTIONS  
AND GENERAL CONDUCT OF VOIR DIRE SUGGESTS THAT  
HIS PURPOSE IN CONDUCTING VOIR DIRE WAS TO QUALIFY  
JURORS AND NOT TO PROBE AND SEARCH FOR DISQUALIFYING  
STATES OF MIND AS WAS HIS DUTY

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Woodmansee contends that Judge Coffrin by conducting voir dire assumed certain additional responsibilities by virtue of that fact. When he prevented the Defendants from conducting their own voir dire he prevented them from probing for actual and implied bias by the use of their own leading questions calculated to flush out latent prejudice. It should be noted that this practice of defense attorneys conducting voir dire through the use of highly leading and suggestive questions received some criticism in Murphy vs. Florida, supra, at p. 595, 596 L Ed. The criticism was that when highly leading questions were asked the Court could not attach great significance to the responses of the jurors. In the instant case the scales were reversed and were severely tilted in the other direction because the Judge by his highly leading questions attempted to lead the jurors to qualifying replies. It is apparent from a review of the transcript of the jury proceedings, that while the Judge sincerely attempted to conduct a proper voir dire, his attitude was to qualify jurors. It was not to probe and search for disqualifying states of mind as was his duty when he had assumed the entire function of conducting voir dire. Aldridge, supra, at p. 1057 L Ed, Bailey vs. United States, 53 F 2d 982, Sellers, supra.



If Woodmansee is right in his contention that the voir dire was generally calculated to qualify jurors rather than probing or disqualifying states of mind, Woodmansee further contends that this was an abuse of discretion under the specific circumstance of Judge Coffrin conducting the entire voir dire. Woodmansee recognizes that he has some burden of proof in this matter and is required to demonstrate to the reviewing Court that the conduct of voir dire supports his contentions.

The first instance of Judge Coffrin's failure to search for a disqualifying state of mind was when he asked a disjunctive question to Mrs. Johnson which called for a responsive answer. Upon her saying " I believe I could serve", he disregarded the fact that she had not responded to his question concerning evaluating the credibility of police officers. (T. 18)

Mrs. Grady indicated that there could be other reasons disqualifying her and the Judge made no further inquiry. (T. 19)

At T. 20, Judge Coffrin "shoehorned" Mr. Palmer into disclaiming disqualification when previously he claimed it. He then posed a disjunctive question to Mr. Palmer and received no response. (T.20) At T. 21, he posed a disjunctive question to the jury panel concerning the government's main witness. The question was posed in the disjunctive and silence could not be interpreted as a responsive answer.

He sought no responsive answer. As indicated previously in the Brief, he never corrected this error even when it was called specifically to his attention.

Judge Coffrin made preliminary interrogations about prior knowledge of Woodmansee in the presence of the entire panel of prospective veniremen. It is the position of Woodmansee that it would have been better practice under all the circumstances known to the Judge in this case, to have asked the jurors all the "general questions" and then dismissed them and called them back, one by one, to begin interrogating them about prior knowledge of Woodmansee. To do it in the manner which Coffrin chose to do it was to alert all prospective veniremen that there was something significant about Woodmansee and the other Defendants. See T. 26, 29, 30.

In questioning Mrs. Johnson, Judge Coffrin led her to qualifying answers by posing leading questions and actually finishing statements for her. For example, after she had indicated that she had read something in the paper Judge Coffrin asked "In other words what knowledge you may have of Mr. Woodmansee derives from an account that may have appeared in the paper with reference to this particular matter". Then Coffrin asked her, "so it is fair to state that you don't have any real knowledge of Mr. Woodmansee?"



Then Judge Coffrin asked, "and I take it you have drawn no conclusions concerning him?".

Mrs. Ball kept telling us in one way or another that she was biased and suggested that she knew a lot more about Woodmansee than she was letting on. Then she was asked for prior knowledge related to this specific offense she asked, "Is this the last one....I don't know... it was around ...we are in 1977". Judge Coffrin never really followed up on her prior knowledge. In his follow-up questions, Mrs. Ball indicated "you know I would have to hear both sides". The Judge then asked her, "You are very certain you have formed no opinion as to the guilt or innocence of these defendants?". Her answer was "No, because I don't know". Upon approaching the bench I immediately asked to have her excused for cause because she would have to hear both sides. The Judge disregarded my objection and claimed "she is not talking in that sense".

(T. 52) I specifically criticized the Court for the follow-up question that lead her to say that no she did not have an opinion as to the guilt or innocence of the defendants. I then pointed the Court specifically to the Murphy case. (T. 52, 53) Judge Coffrin's handling of this particular juror is not merely an example of his use of leading questions to qualify a juror, but is an example of his accepting a juror as qualified who under the circumstances he should have doubted as being qualified.

At that point in the voir dire Judge Coffrin claimed, "I do not see any reason at the moment to excuse her for cause".

(T. 54)

When Judge Coffrin questioned Deputy Sheriff Newcity, he tried to "shoehorn" Newcity into a qualifying state. (T. 77, 78) Even with the Judge's highly suggestive and highly leading questions, Newcity did not claim to have the ability to lay aside his partiality for police officers but suggested only "I would try to, sir". The Judge then went on to another juror. Certainly the "unknown juror" on page 78 had learned in Judge's questioning of Newcity what you are supposed to say when asked your opinion about police credibility. It should be noted not only in connection with this portion of the argument but with the previous portion concerning failure to ask certain questions, that Judge Coffrin failed to ask even the unknown juror the appropriate question concerning police officer credibility. Note further the following question posed by Judge Coffrin to the "unknown juror". "The fact you have a nephew on the Burlington Police Force, you don't feel it would affect your ability to do that in any way?" The question in and of itself tells the juror what answer the Judge wants, a qualifying answer. Judge Coffrin tries to qualify Newcity again at T. 90, 91 and finally at my specific request, posed the appropriate question about police officer credibility and received a disqualifying answer.

The nature of the Judge's questions in initially interrogating Mr. Newcity, his candid answers which were not treated as disqualifying, and my strenuous attempts to get the Judge to ask appropriate questions, suggest that Judge Coffrin was in fact conducting voir dire so as to illicit qualifying



states of mind and whose failing to probe for both the obvious and hidden prejudices prospective veniremen.

Another example of the Judge's "shoehorning" occurs with Mr. Dodge at T. 111 - 113. Dodge was concerned whether Woodmansee was the same Woodmansee involved in a "murder down South". And after expressing his concern, the Judge said "in other words if you were on this case you could be fair and impartial and wouldn't have any bias or prejudices as far as any of the defendants were concerned and try them strictly on the evidence in this case?" Mr. Dodge replied, "I will try that". Not only was the Judge's question leading and suggestive of the appropriate answer, the juror never said that he could lay aside any impartiality but only that he would "try that". The Court rather than probing further in the face of my objection considered him qualified. (T. 113) At T. 115 and 116 the Court continues to interrogate Mr. Dodge. The Court knows now that Mr. Dodge has had out of Court evidence available to him and that he is presumed prejudiced under the standards of Marshall supra.

While there are other examples of leading questions attempting to qualify jurors rather than discover disqualifying state of mind, the Court's attitude toward the entire voir dire is fairly well illustrated in its questioning of a juror named Mr. Lagrow in its later discussion of that juror with counsel at the bench. It commences on T. 191 with Mr. Lagrow indicating to the Court that his son is a police officer, continues on



T. 192 with him indicating to the Court that it would be difficult to be impartial in a case involving policemen. On T. 194 Lagrow indicates that he will give less weight to an informant. He indicates that he is close minded as to the defendants in this case because his son is a police officer and because "what I read in the papers over the past years". (T. 196) At T. 198 Lagrow indicates knowledge of Woodmansee in the presence of the balance of the jury. At T. 200 the Court indicates that it does not feel that the rest of the members of the panel will be affected by anything that Mr. Lagrow has had to say and that he will give a challenge for cause. The Court further denied a request to determine whether Lagrow had disseminated his views about law enforcement officials or Bernard Woodmansee to other prospective jurors during the day. The Court says its attitude toward jurors who are in fact disqualified by suggesting that Lagrow's candid statements" (of disqualification) is made for the purpose of making sure that Lagrow disqualifies himself. (T. 201) The Court's remarks strongly suggests that it did not anticipate finding prospective "partial" jurors, especially those who claimed their partiality in such strong terms. It is interesting to note that this is the only juror who claimed partiality based on his reading over the years.

Judge Coffrin committed an abusive discretion by failing to search for disqualifying states of mind.



WOODMANSEE HAD BUT THREE (3) PREEMPTORY CHALLENGES AND WAS UNFAIRLY REQUIRED TO USE THEM IN PLACE OF CHALLENGES FOR CAUSE BECAUSE JUDGE COFFRIN FAILED TO ACCEPT CHALLENGES FOR CAUSE WHEN HE SHOULD HAVE.

Under the system of challenges devised by Judge Coffrin, the Defendants were given twelve (12) challenges jointly if they could agree. In the event they could not agree, each one had three (3) to exercise individually. (T 71,72). Twelve (12) out of thirty-two (32) jurors (before picking alternates) claimed to know or have knowledge of Bernard Woodmansee. Woodmansee's counsel objected to each of those for cause on the basis that they were presumed to be prejudiced under federal standards. See Marshall, supra and Murphy, supra. Woodmansee's counsel had only three (3) preemptories individually, (which he used to challenge persons who had knowledge of Woodmansee), (T195-196), and at the conclusion the jury was empaneled with two (2) persons who knew Bernard Woodmansee -- a Mrs. Johnson and a Mr. Pratt. In addition, the jury contained a Mrs. Grady who claimed that she might be prejudiced "for other matters."

It should be noted that only one (1) of twelve (12) jurors who had prior knowledge of Woodmansee claimed that he would be impartial when, according to the survey, we could have expected about half to say that they could not assure us that they would lay aside their prior opinion. The failure to achieve a higher response rate of partiality casts suspicion over the protestations of the jurors who claimed impartiality and who also knew Woodmansee.



Not only should the judge have accepted challenges for cause as to those jurors who knew Woodmansee and claimed to be impartial, he should also have left the preemptory challenges free and unimpaired for Woodmansee's attorney to use. The judge's conduct throughout the voire dire was a denial and impairment of the right of preemptory challenge. Swain v. Alabama, supra, at 772 L ed.

#### CONCLUSION

Woodmansee claims that any abuse of discretion in Judge Coffrin's failure to change the venue of the trial or in his conduct of voire dire constituted reversible error no matter what the weight of the evidence on the merits against Woodmansee.



SPECIFIC RELIEF SOUGHT

Defendant Woodmansee seeks the following relief:

1. A new trial;
2. A change of venue for the new trial.

SPECIAL APPENDIX A

SUMMARY OF WOODMANSEE PUBLICITY IN  
THE BURLINGTON FREE PRESS

December 10, 1963      Grand Larceny, Now  
CHARGES KEEP ADDING UP HERE FOR  
WOODMANSEE AND GARCEAU

Stories about rapidly growing list of felonies facing Woodmansee.

January 21, 1964      Faces Felony Charges  
WOODMANSEE'S LAWYERS QUIT WITH PERMISSION  
OF JUDGE

Woodmansee's two attorneys withdraw in view of Woodmansee's failure to go along with "plea bargain".

February 5, 1964      In Cafe Case  
WOODMANSEE GUILTY ON 2 COUNTS

Woodmansee convicted of Burglary and attempted arson. Prosecutors arrest "co-defendants" during the trial.

February 28, 1964      WOODMANSEE GETS 6-10 YEARS

Woodmansee sentenced on burglary and attempted arson. State had dropped possession of burglary tools. Jury had found him innocent of stealing a car.

December 3, 1964      COURT SAYS WOODMANSEE TO GET NEW TRIAL ON  
BURGLARY CHARGE

Vermont Supreme Court upsets burglary conviction.

May 19, 1965              Out of Prison, Back to Court  
WOODMANSEE ATTACKED HIM, CLAIMS WITNESS

Federal authorities go after Woodmansee for August 2, 1963 incident with Ivan Clark Hendee which predated the attempted arson on or about November 16, 1963. Hendee had testified in April, 1962 in a trial in the Federal Court of Vermont which resulted first in Woodmansee being convicted of interstate transportation of stolen automobiles and then for perjury in a federal trial.

July 8, 1965              Woodmansee Already Free  
WINOOSKI CONVICT WANTS OUT: CHARGES TRIAL DEAL

Woodmansee linked in story with former co-defendant.

July 17, 1965              3 YEARS ON U.S. WITNESS CHARGE FOR  
WOODMANSEE

Woodmansee convicted in Federal Court of obstructing justice (assaulting Hendee). Note trial was had in Brattleboro although incident occurred in Colchester, a town located in Chittenden County and adjacent to Burlington, Vermont



July 23, 1965

WOODMANSEE CONVICTION DUE APPEAL

Report of Woodmansee appeal on obstructing justice conviction.

November 10, 1965

Burlington Man in Middlebury Jail  
WOODMANSEE BACK IN CLUTCHES OF LAW  
CHARGED WITH RECEIVING STOLEN GOODS

Woodmansee was arrested for receiving stolen goods. Brief repetition in article of his record.

February 7, 1968

Jailed in Plattsburgh  
4 VERMONT MEN ARRESTED ON FORGED CHECK CHARGES

Woodmansee arrested in Clinton County, New York for possession of forged checks.

November 7, 1968

BURLINGTON TRIO FACES CHARGES IN MIDDLEBURY

Woodmansee arrested on forgery charge.

December 31, 1968

WOODMANSEE, GIROUARD DENY ALL CHARGES HERE

Woodmansee arrested and charged with larceny of an overcoat from the Roostertail Restaurant, assaulting the arresting officer and disorderly conduct.

February 25, 1969

WOODMANSEE TRIAL SET IN MIDDLEBURY MARCH 25

Woodmansee scheduled for trial in Middlebury on forged check.

March 26, 1969

WOODMANSEE'S TRIAL OPENS IN MIDDLEBURY

Report on Woodmansee's forged check trial in Middlebury. Report of recalcitrant and forgetful witness and the reporter's reactions to her observations of Woodmansee's demeanor during the trial.

March 27, 1969

HANDWRITING EXPERT TESTIFIED AT BERNARD  
WOODMANSEE TRIAL

Report of details of forged check trial including the famous Miss McCarthy, handwriting expert from Boston.

March 28, 1969

JURY FINDS WOODMANSEE GUILTY OF FORGERY

Woodmansee convicted. Newspaper report carries summary of trial testimony.

May 1, 1969

WOODMANSEE'S BID FOR RELEASE FAILS

Woodmansee files a writ of habeas corpus with United States District Judge Leddy which was denied. Claims he has "a long list of felony convictions on his record".



May 6, 1969

WOODMANSEE GETS 5-10 YEARS FOR FORGERY,  
ATTACKS LAWYERS

Sentencing on forgery charge brought 5-10 years. Assistant Attorney General claimed Woodmansee had been involved in "a substantial amount of criminal activity since 1959". Woodmansee held out in article "as an avid student of law" who "came to court armed with a stack of hand-prepared briefs, clippings and law books".

July 4, 1969

NEXT TRIAL MAY EARN LIFE FOR WOODMANSEE

Vermont wants Woodmansee as habitual offender.

August 16, 1969

WOODMANSEE'S PLEA FOR HEARING DENIED

Leddy denies second application for writ of habeas corpus on forgery conviction. Woodmansee's now famous quote "Vermont should secede from the United States if it doesn't intend to abide by the Constitution" is referred in this article.

March 2, 1971

WOODMANSEE SENTENCED TO 3 1/2 YEARS IN PRISON

Woodmansee plead guilty to a forged check in return for having habitual offender charge dropped against him in St. Albans, Vermont. Note St. Albans is in Franklin County, one of the counties from which veniremen is drawn for the federal court in Burlington. Middlebury falls into the same category.

August 21, 1972

Detectives and members of the CRASH program standing guard at the apartment house start search of the two cars in parking lot after search warrants were obtained.  
TRIO EXPECTED TO ENTER PLEAS TODAY IN LESTAGE  
MURDER CASE

Long and involved article suggesting the following about Woodmansee: (1) "one of Vermont's most notorious criminals"; (2) has faced several felony charges throughout the state including breaking and entering, arson, grand larceny, possession of burglary tools and obstructing justice and an habitual offender charge; (3) Woodmansee has acted as his own lawyer; (4) Woodmansee has acted as lawyer for many of the inmates during several uprisings at the State Prison. Leahy (now U.S. Senator) charges against Woodmansee allegedly stems from Woodmansee's attempt to provide alibis for the alleged murders of one Raymond Lestage.

December 15, 1972

HIGH COURT GIVES WOODMANSEE OK FOR BAIL BOND

Woodmansee obtained amended bail order on the charge of being an accessory after the fact in the Lestage murder from the Vermont Supreme Court.



<u>February 1, 1973</u>	WOODMANSEE TRIAL TO START FEB. 13
<u>February 10, 1973</u>	WOODMANSEE TRIAL OPENS FEB. 20
<u>FEBRUARY 15, 1973</u>	CHARGE OF OBSTRUCTING JUSTICE ALSO FILED AGAINST WOODMANSEE
<u>February 20, 1973</u>	WOODMANSEE GOES ON TRIAL
<u>February 21, 1973</u>	WOODMANSEE JURY SELECTION CONTINUES
<u>February 22, 1973</u>	WOODMANSEE JURORS SELECTED
<u>February 23, 1973</u>	WOODMANSEE TRIAL BEGINS, MRS. BADORE TAKES STAND
<u>February 24, 1973</u>	WITNESS TELLS OF 'THREATS'
<u>February 26, 1973</u>	SATURDAY SESSION HELD IN WOODMANSEE TRIAL
<u>February 27, 1973</u>	TESTIMONY ON CAR, WEAPONS HEARD IN WOODMANSEE TRIAL
<u>February 28, 1973</u>	STATE MAY REST CASE AGAINST WOODMANSEE TODAY
<u>March 1, 1973</u>	WOODMANSEE TRIAL DELAYED BY HEARING
<u>March 2, 1973</u>	WOODMANSEE DEFENSE EXPECTED TO REST TODAY
<u>March 3, 1973</u>	JURY FINDS WOODMANSEE GUILTY
<u>March 13, 1973</u>	WOODMANSEE GETS 6 TO 7 YEARS

Long, detailed and involved report of Woodmansee trial in Vermont District Court. Woodmansee charged with being an accessory after the fact in murder of one Raymond Lestage. Woodmansee acted as own counsel with advisory counsel provided by James Morse, Public Defender. Almost every article includes Woodmansee's name in the headline. These articles constitute elaborate and prejudicial publicity.

<u>April 4, 1973</u>	WOODMANSEE SUES OVER CONVICTION
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Woodmansee filed a suit in United States District Court for his conviction on the Lestage murder case.

<u>April 5, 1973</u>	WOODMANSEE WANTS TRIAL ON BASIS OF 'NEW EVIDENCE'
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Woodmansee filed a petition on his own for a new trial in the Lestage murder case.



June 5, 1973

TWO YOUNG BURLINGTONIANS ARRAIGNED  
ON RAPE CHARGE

Bernard Woodmansee, Jr., son of Defendant Woodmansee, was arraigned on a rape charge. There is no difference in their name save for the "Jr."

January 4, 1974

WOODMANSEE'S APPEAL FOR RELEASE IS DENIED

Woodmansee's request for release pending appeal on the Lestage murder case was denied by the Vermont District Court.

May 17, 1974

WOODMANSEE'S BAIL PLEA IS CONSIDERED

Vermont District Court again considers Woodmansee's request for bail pending appeal. Article notes that similar request was made in United States District Federal Court before Chief Judge James A. Holden.

September 6, 1974

INMATE WOODMANSEE WINS 1ST ROUND: PHONE  
CALLS WILL NOT BE MONITORED

Woodmansee obtains some stipulated relief to having unmonitored phone calls between himself and his appointed counsel, apparently during pendency of Lestage appeal.

September 30, 1974

INMATE'S PREDICTION DENIED BY STONEMAN

This article shows that the press is certainly taking Bernard Woodmansee seriously. It reports that he had successfully predicted in a news release the resignation of Julius Moeykens as prison warden at Windsor and that he was now predicting that the Commissioner of Corrections would resign. Both the Commissioner Ken Stoneman and his supervisor, Thomas C. Davis, Human Services Secretary for the State of Vermont responded publicly to Woodmansee's prediction.

August 22, 1975

STATE HIGH COURT ORDERS NEW TRIAL FOR  
WOODMANSEE

Woodmansee's conviction as accessory after the fact in Lestage murder was overturned by the Vermont Supreme Court. It is important to read the Vermont Supreme Court comments about the conduct of the trial in connection with the present appeal.

August 30, 1975

WOODMANSEE FREED ON BAIL

Woodmansee freed on bail awaiting "new trial" on charge of accessory after the fact on Lestage murder.

October 24, 1975

MURRAY ARGUES WOODMANSEE DECISION

Vermont Supreme Court decision overturning Woodmansee's conviction becomes a "political issue". Deputy State's Attorney Francis Murray accuses the Vermont Supreme Court of a need for "open-mindedness and intellectual humility" if they were to admit their "error" in reversing Woodmansee's conviction.



November 25, 1975      NEW TRIAL FOR WOODMANSEE REAFFIRMED

Vermont Supreme Court denies the Chittenden County Prosecutor's office a rehearing on their decisions to vacate conviction on accessory after the fact.

PRE-TRIAL ARTICLES ON THE INSTANT CASE

May 24, 1976              3 HELD IN PROBE OF STOLEN CHECKS

This is a report of the arrest of Bernard Woodmansee in the instant case on appeal. Not only does the report contain a factual account of Woodmansee's arrest, it also contains references to the Vermont State Prosecutor's intentions to charge Woodmansee with being a habitual offender, inciting to commit a felony and two other unspecified charges. It also contains a reference to Woodmansee having been convicted as accessory after the murder of Raymond Lestage.

May 26, 1976              WOODMANSEE OUT ON \$15,000 BAIL

Another report of the instant case with references to the habitual offender charge, Woodmansee being on parole and Woodmansee awaiting trial as accessory after the fact in a murder case.

On October 25 or 26, 1976 we presented to the Court a newspaper article which was contained in a previous Sunday edition of the Burlington Free Press and was devoted to unsolved murders. It was submitted to the Court as a part of the Defendant's Motion for a Change of Venue. The articles connected Woodmansee with "unsolved murders" in Chittenden County. It may be found in the record of the trial under exhibits given to the Court on October 25 or 26, 1976.

POST-TRIAL ARTICLES ON THE INSTANT CASE

November 8, 1976          One Defendant Acquitted  
WOODMANSEE CONVICTED

December 7, 1976          Woodmansee Sentenced  
12 YEARS ON CHECK CHARGE

MISCELLANEOUS ARTICLES

May 16, 1976              WOODMANSEE HELD IN CHECK THEFTS

June 27, 1973              WOODMANSEE, 19, FREE ON \$10,000 BAIL

December 18, 1973          WOODMANSEE FACES 2 MORE COUNTS

Miscellaneous articles concerning Bernard Woodmansee, Jr., son of Bernard Woodmansee, Sr. Note in both articles Woodmansee, surname, is used in headline.

